

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

Hearing Date/Agenda Number

P.C 11/10/04 Item No.: 4.c.

File Numbers

CP04-093 & ABC04-012

Application Type

Conditional Use Permit & Liquor License
Exception

Council District

3

Planning Area

Central

Historic District

Downtown Commercial

Assessor's Parcel Number(s)

467-22-097

STAFF REPORT

PROJECT DESCRIPTION

Completed by: F. Lee Butler

Location: Southeast corner of East Santa Clara and South First Streets

Gross Acreage: 0.39

Net Acreage: 0.39

Net Density: n/a

Existing Zoning: DC Downtown
Primary Commercial District

Existing Use: Banquette facility and offices

Proposed Zoning: No change

Proposed Use: Conditional Use Permit to allow a drinking establishment,
entertainment establishment, and late-night use in an existing commercial
building, and associated Liquor License Exception

GENERAL PLAN

Completed by: LB

Land Use/Transportation Diagram Designation
Core Area

Project Conformance:

☒ Yes ☐ No

☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: LB

North: Office

DC Downtown Primary Commercial

East: Commercial

DC Downtown Primary Commercial

South: Commercial

DC Downtown Primary Commercial

West: Commercial

DC Downtown Primary Commercial

ENVIRONMENTAL STATUS

Completed by: LB

☐ Environmental Impact Report adopted

☒ Exempt

☐ Negative Declaration circulated on

☐ Environmental Review Incomplete

☐ Negative Declaration adopted on

☐ Addendum to EIR

FILE HISTORY

Completed by: LB

Annexation Title: Original City

Date: March 27, 1850

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval

☒ Approval with Conditions

☐ Denial

☐ Uphold Director's Decision

Date: 11/2/04

Approved by:



☒ Action

☐ Recommendation

CONTACT / APPLICANT	OWNER	
Jenny Wolfes 691 Sweetbriar Dr. Campbell, CA 95008	Stephen & Judy Lin 12 S. 1 st St., Ste. 205 San Jose, CA 95113	

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: LB

Department of Public Works

- No comments.

Other Departments and Agencies

- Police Department, Fire Department, and Environmental Services Department (See Attached)

GENERAL CORRESPONDENCE

- Operations & Management Plan from applicant.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Jenny Wolfes, is requesting a Conditional Use Permit (CUP) and a Liquor License Exception to allow (1) a drinking establishment, (2) an entertainment establishment, and (3) late-night operation until 2:00 a.m. daily at an existing commercial building located at the southeast corner of Santa Clara and S. 1st Streets.

The subject site is located within the boundaries of the DC Downtown Primary Commercial Zoning District. Per Table 20-140 of the Municipal Code, a CUP is required for drinking and entertainment establishments. Table 20-140 of the Municipal Code indicates that no parking is required for restaurants, drinking establishments, or entertainment establishments in the Downtown Primary Commercial Zoning District. In 1998, the Planning Commission approved a previous CUP for a drinking establishment and late-night use, however, that permit has now expired. The tenant space is currently vacant and rented out for occasional catered/banquet functions.

Site Conditions and Context

The subject 0.39-gross-acre site is located at the southeast corner of East Santa Clara and South 1st Streets (8 S. 1st St.). The existing Bank of Italy building is a designated City Landmark Structure. It is also a Contributing Structure to San Jose Downtown Commercial Historic District, which is listed on the National Register of Historic Places. The subject structure is currently surrounded by office uses to the north and commercial uses to the east, south, and west. To the southeast, at the southwest corner of Fountain Alley and South 2nd Street, a mixed use project with ground floor commercial uses with residential units above is anticipated to occupy what is now a surface parking lot.

Project Description

The subject use would occupy approximately 12,000 square feet on the ground floor and mezzanine level of the subject structure. The tenant space takes up the majority of the structure's first floor, including the entire Santa Clara Street frontage and the area at the corner of E. Santa Clara and S. 1st Streets. No interior or exterior changes are proposed to the existing structure. The applicant is proposing operation between the hours of 6 a.m. to 2 a.m. Both deejay and live entertainment are proposed, as well as dancing. All entertainment would be indoors.

GENERAL PLAN CONFORMANCE

The proposed use of the commercial building is consistent with the San José General Plan Land Use/Transportation Diagram designation of Core Area in that eating, drinking, and entertainment uses are an intended use under the designation. The Core Area designation intends for a mix of office, retail, service, high density residential, and entertainment uses in the Downtown Core Area to facilitate a vibrant urban environment. The proposed use furthers this intent. The proposed use also furthers the City's General Plan Downtown Revitalization Major Strategy. This Major Strategy encourages new investment in and around the Downtown to create a prominent and attractive place with a vibrant mix of uses. The proposed establishment would continue the occupation of a tenant space and encourage additional investment in Downtown by attracting more residents and visitors to the area.

ENVIRONMENTAL REVIEW

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was found to be exempt from environmental review. Section 15301 exempts projects involving the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. No interior or exterior modifications of the existing structure are proposed, and the space was previously used as a banquet facility/bar. The proposed use will not expand the previous uses of the area.

ANALYSIS

The primary policies applicable for the review and analysis of this project are (1) City Council Policy 6-27 for the Evaluation of 24 Hour Uses, (2) City Council Policy 6-23 for the Evaluation of Nightclubs and Bars, and (3) Criteria for Review of a Liquor License Exception. In addition, the concerns and comments from the San José Police Department were taken into consideration. The analysis of each of these issues is discussed below.

City Council Policy 6-27: Evaluation of 24 Hour Uses

The City Council Policy, Evaluation of 24-Hour Uses, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to nightclubs/bars, the Policy states that uses under this category should meet the City Council Policy on the Guidelines for Evaluation of Nightclubs and Bars. Please see the discussion below.

City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars

The City Council Policy, Guidelines for Evaluation of Nightclubs and Bars, was adopted to facilitate the evaluation process for individual permit applications by identifying the needed project characteristics that are necessary for approval.

Key issues identified in the policy that are relevant to this proposal include land use compatibility and noise. The Policy encourages nightclubs in the Downtown Core provided that they do not adversely impact existing or planned residential uses. The subject site is located in the Downtown Core, and all entertainment activities would be located within the building, thereby reducing any potential noise impacts to the surrounding area. While the subject site is currently surrounded by office and commercial uses, residential uses are anticipated directly to the southeast across Fountain Alley. With all entertainment isolated to the interior of the building and no alcohol permitted outside, Staff does not anticipate negative noise impacts from the use on the future nearby residential properties. Furthermore, conditions of approval require that the "use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City."

In addition, the area immediately surrounding the proposed nightclub/bar is designated for Core Area in the General Plan. The Core Area designation intends for a mix of office, retail, service, high density residential, and entertainment uses in the Downtown Core Area to facilitate a vibrant urban environment. The proposed use furthers this intent.

In addition to the noise and compatibility issues noted above, the Policy also addresses garbage, age restrictions, and operational hours. Per the attached operations plan, broom cleaning of the adjacent sidewalks is to occur each evening after closing, and hose washing of the sidewalks will occur to ensure that no litter, garbage, or waste is present on the street or sidewalk adjacent to the club by sunrise the following day. In conformance with the policy, the applicant is proposing to admit only patrons 21 years of age and older, and closing time would be 2 a.m. daily. Based on the analysis, staff concludes that the proposed use is consistent with the intent of the Council Policy.

Liquor License Exception Permit

According to the Police Department memo (see attached), the subject site is located in an area that is unduly concentrated with on-sale Alcohol Beverage Control (ABC) licenses. The license of the current operation is a temporary one and ABC is requiring that the applicant obtain a new one.

A Liquor License Exception has been submitted, File No. ABC04-012, for concurrent review with this Conditional Use Permit. Under the criteria for review of a Liquor License Exception, it states that if the premises of the proposed license is located in the Downtown Core Area/Downtown Entertainment District, exceptions may be allowed. The subject site is located within Downtown Core Area/Downtown Entertainment District, and although the ABC license type applied for could allow for the off-sale of alcohol, the applicant has not included off-sale of alcohol in the proposed Conditional Use Permit. Since this Conditional Use Permit would not grant the ability for the off-sale of alcohol, staff recommends the granting of the exception for on-sale alcohol sales and consumption in an area over-concentrated with

on-sale ABC licenses. Based on the analysis, staff concludes that the proposed use is consistent with the Council Policy in regard to police concerns and public safety.

Police Department Concerns

The Council Policy, Guidelines for Evaluation of Nightclubs and Bars, specifies that the Chief of Police should evaluate all bar and nightclub proposals and recommend conditions necessary to ensure the safety of patrons and citizens. Officer Dave Kirkendall of the San Jose Police submitted a memorandum to the Planning Department dated October 14, 2004 (attached). The memo states that the area is significantly over the 20% crime index. However, no opposition to the proposed use is expressed. The memo also states that the Police Department has no objections to the issuance of the Liquor License Exception.

PUBLIC OUTREACH

Notices of the public hearing for this project were sent to all property owners within 500 feet of the subject property. The Planning Commission Agenda is posted on the City of San José website, which includes a copy of the staff report. Staff has been available to discuss the project with members of the public.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Core Area on the adopted San José 2020 General Plan Land Use/Transportation Diagram. The proposed use is consistent with this designation.
2. The site is currently zoned DC Downtown Primary Commercial.
3. The site is 0.39 gross acres in size.
4. The applicant is requesting a Conditional Use Permit (CUP) and a Liquor License Exception to allow for (1) a drinking establishment, (2) an entertainment establishment, and (3) late-night operation between 12:00 midnight and 2:00 a.m. at an existing commercial building at the southeast corner of E. Santa Clara and S. 1st Streets.
5. The areas surrounding the site are also designated Core Area on the San José 2020 General Plan Land Use/Transportation Diagram and are located in the DC Downtown Primary Commercial zoning district. The subject structure is currently surrounded by office uses to the north and commercial uses to the east, south, and west. To the southeast, at the southwest corner of Fountain Alley and South 2nd Street, a mixed use project with ground floor commercial uses with residential units above is anticipated to occupy what is now a surface parking lot.
6. The existing Bank of Italy building is a designated City Landmark Structure. It is also a

Contributing Structure to San Jose Downtown Commercial Historic District, which is listed on the National Register of Historic Places.

7. The subject bar would occupy approximately 11,430 square feet on the ground floor and on the mezzanine level of the subject structure. The tenant space takes up the majority of the structure's first floor, including the entire Santa Clara Street frontage and the area at the corner of E. Santa Clara and S. 1st Streets. No interior or exterior changes are proposed to the existing structure.
8. The applicant is proposing operation between the hours of 6 a.m. to 2 a.m. and both deejay and live entertainment are proposed, as is dancing. All entertainment would be indoors.
9. A Conditional Use Permit is required to allow the drinking and entertainment establishment and late-night use in the DC Downtown Primary Commercial Zoning District.
10. Council Policy 6-23 specifies that the Chief of Police evaluate all bar and nightclub proposals and recommend conditions necessary to ensure the safety of patrons and citizens. The Police Department has reviewed the proposal and did not express objections to the 2 a.m. closure or the issuance of the Liquor License Exception. The nightclub/bar is required to obtain applicable permits from the Police Department.
11. The subject site is located in the Downtown Core/Entertainment District.
12. The premises are not located in an existing Project Crackdown/Weed and Seed Area or similar areas which qualify for these programs on the City's Neighborhood Revitalization Strategy Criteria.
13. The premises are not located within 300 feet of any public or private school.
14. The premise is not an existing business.
15. Table 20-140 of the Municipal Code indicates that no parking is required for restaurants, drinking establishments, or entertainment establishments in the Downtown Primary Commercial Zoning District. No on-site parking is proposed as part of the project.
16. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project was found to be exempt from environmental review.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project conforms to the City's General Plan.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features in this title, or as otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.
4. The premises of the proposed liquor license is:
 - a. Located in the Downtown Core Area.
 - b. Not located in an existing Project Crackdown/Weed and Seed Area or similar areas which qualify for these programs on the City's Neighborhood Revitalization Strategy Criteria.
 - c. Not located within 300 feet of any public or private school.
 - d. Not an existing business.
5. The City's Police service investigative information (including but not limited to site specific neighborhood analysis of calls for service) has indicates that the use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems,
6. The use at the subject premises is legal per Title 20, with the approval of Conditional Use Permit file number CP04-093 for an entertainment, drinking, and public eating establishment with late night hours of operation until 2:00am daily.
7. The project proposes on-site consumption of alcohol only

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and a Liquor License Exception subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Additional Permits.** Obtain all applicable permits required per the San José Municipal Code including but not limited to required permits from the Police and Fire Departments.
3. **Trash Enclosure.** Prior to occupancy, the applicant shall provide Planning Staff with details of how and where garbage and recycling bins for the proposed use are located. If legal, covered trash enclosures are not present, then details of a new covered trash enclosure shall be provided and shall be approved through the appropriate permit process, subject to the discretion of the Director of Planning, Building, and Code Enforcement.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Conditional Use Permit Submittal: Diamond SJ Enterprises, 8 S. First Street, San Jose, CA" dated July 30, 2004, on file with the Department of Planning, Building and Code Enforcement.
2. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, CP04-093, shall be printed on all construction plans submitted to the Building Division.

3. **Fire Safety.** The applicant shall meet all requirements of the Fire Department at the Building Permit stage.
4. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
6. **Operations Plan.** The facility shall operate in conformance with the attached operations plan titled "Bella Luce." If the operations plan conflicts with any conditions found in this permit, the conditions within the permit shall take precedence.
7. **Anti Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
 - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include damp washing of all exterior walls, streets, and sidewalks along the project's frontage to ensure that no litter, garbage, waste is present on the street or sidewalk adjacent to the club by sunrise the following day.
 - b. Mechanical equipment used for outside maintenance, including blowers and street sweepers shall not be used between 10:00 p.m. and 6:00 a.m. daily.
 - c. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
8. **Hours of Operation.** Hours of operation are limited to 6:00 a.m. to 2:00 a.m., seven days a week.
9. **Alcohol Service.** Alcohol service shall cease at 1:30 a.m., daily. No alcohol is permitted outdoors.
10. **Sale of Alcohol.** No off-sale of alcohol is permitted.
11. **Entertainment.** Entertainment shall cease at 1:30 a.m., daily. No outdoor entertainment is permitted with this approval.
12. **Age of Patrons.** No patrons under the age of 21 years old shall be allowed within the establishment.
13. **Exterior Changes.** No exterior changes are permitted as part of this approval. Any changes to the exterior of the structure are subject the requirements set forth in the San Jose Municipal Code, including but not limited to the Historic Preservation Ordinance and the Zoning Ordinance. Any exterior changes shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
14. **Lighting.** This permit allows no new on-site, exterior lighting. Any exterior lighting shall be subject to approval by the Director of Planning, Building, and Code Enforcement.

15. **Public Right-of-Way.** Neither patrons waiting in the queue nor ropes to control the queue shall impede pedestrian travel in the public right-of-way at any time. A minimum of five feet of clear space shall be provided between queuing locations and any obstructions in the public right-of-way, including but limited to a minimum five-foot separation between street trees, light posts, and street signs.
16. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning, Building, and Code Enforcement.
17. **Environmental Services Department Comments.** The proposed facility must conform to the City of San Jose industrial waste discharge regulations. Any non-domestic wastewater discharge into the sanitary sewer system will require Source Control Staff to review and approve the final plans. Such review will include sizing of grease traps and interceptors. Contact Environmental Engineering Staff at (408) 945-3000 with any questions.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment in accordance with Title 20 to extend the validity of this Permit for a period of up to but not exceeding one (1) year; provided, however, that no more than two (2) such term extensions are approved. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Time Limit.** This Conditional Use Permit expires and has no further force or effect five (5) years from the date of this Permit.

Please note that this Conditional Use Permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.

3. **Renewal.** The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal Conditional Use Permit application. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.
4. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance



Scale: 1"= 300'



Subject Site



File Number: CP04-093

Council District: 3

Quad Number: 83

**CITY OF SAN JOSÉ, CALIFORNIA
DEPARTMENT OF PLANNING, BUILDING AND CODE ENFORCEMENT
STATEMENT OF EXEMPTION**

FILE NO.	CP04-093 & ABC04-012
LOCATION OF PROPERTY	Southeast corner of Santa Clara Street and S. First Street (8 S. 1 st St.)
PROJECT DESCRIPTION	Conditional Use Permit and associated Liquor License Exception to allow entertainment, eating establishments and operation after midnight to 2:00am at an existing night club (previously approved permit expired) on a 0.39 gross acre site
ASSESSOR'S PARCEL NUMBER	467-22-097

CERTIFICATION

Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

15301 Existing Facilities. Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use.

No interior or exterior modifications of the existing structure are proposed, and the space has been used as a nightclub, bar, and catering facility. The proposed use will not expand the previous uses of the area.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement



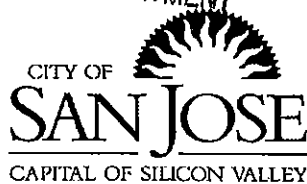
Deputy

Date October 25, 2004

Project Manager: Lee Butler

(Rev. 10/23/02)

OCT 13 2004
CITY OF SAN JOSE
PLANNING DEPARTMENT



Memorandum

TO: Lee Butler
Planning Department

FROM: Ofcr. Dave Kirkendall #1749
San Jose Police Vice Unit

SUBJECT: CP 04-093

DATE: October 14, 2004

Approved

Date

I have received your October 8, 2004 request for input regarding on-sale alcohol service at the Southeast Corner Santa Clara and South 1st Street (8 South 1st Street). The application is for a drinking establishment and entertainment establishment with hours until 2:00 AM. Jenny Wolf, one of the owners has indicated they are seeking a Type 48 On-Sale General Public Premise ABC License. Beer, wine and distilled spirits are authorized but minors are not allowed on the premises.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, with certain exceptions as described in B&P Section 23958 (b)(1). A location can be unduly concentrated because of its criminal statistics and/or it's proximity to other ABC Licenses. ABC can issue the license per B&P Section 23958 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is not in a Project Crackdown, Weed and Seed Program or Strong Neighborhood Initiative Area.

The hotel is located in San Jose Police Beat E3. The reported crime statistics as defined by B&P Section 23958.4(c) are significantly over the 20% crime index thus the location is considered unduly concentrated per B&P Section 23958.4 (a)(1). An exception permit will have to be granted.

Police Beat Crime Statistics Fiscal Year 2003-2004

Beat	Index Crimes	Arrests	Total	20% Above Average
E3	298	755	1053	YES
City Average	317	293	610	NO
Average + 20%	380	352	732	YES

A check of police incidents and calls for service during the last year indicated a total of 2 (two) contacts at the location. The nature of the calls is listed in the table below.

RECEIVED
OCT 13 2004
CITY OF SAN JOSE
PLANNING DEPARTMENT

Police Contacts between October 4, 2003 & October 4, 2004

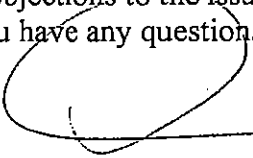
Number	Nature of Call
1	Open Door (10-34)
1	911 (Emergency Call)

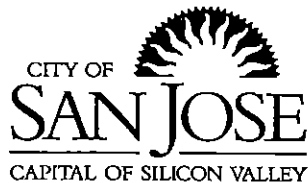
Department of Alcohol Beverage Control (ABC) records indicate the location is in census tract 5009.01. Pursuant to B&P Section 23958.4 (a)(2) ...the ratio of on-sale retail licenses to population in census tract 5009.01 **does** exceed the ratio of on-sale retail licenses to population in the county in which the applicant premises are located. An exception permit will have to be granted.

Authorized and Current ABC Licenses in Census Tract 5009.01

Census Tracks	Authorized ABC Licenses As of January 2003		Current ABC Licenses As of September 3, 2004		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale Current/Pending	Off - Sale Current/Pending	On - Sale	Off - Sale
5009.01	4	2	50/7	6/1	YES	YES

The Police Department is concerned about the very high crime concentration and ABC License concentration, however, because the location is in the City's Entertainment Zone, allowances are made for those factors. The Police Department has no objections to the issuance of the exception permit. Please feel free to contact me at 277-4322 if you have any questions.


Dave Kirkendall #1749
Administrative Officer
Special Investigations/Vice



Memorandum

TO: Lee Butler
Planning and Building

FROM: Ebrahim Sohrabi
Public Works

**SUBJECT: FINAL RESPONSE TO
DEVELOPMENT APPLICATION**

DATE: 10/19/04

PLANNING NO.: CP04-093
DESCRIPTION: Conditional Use Permit to allow entertainment, eating establishments and operation after midnight to 2:00am at an existing night club (previously approved permit expired) on a 0.39 gross acre site
LOCATION: southeast corner of Santa Clara Street and S. First Street
P.W. NUMBER: 3-07519

Public Works received the subject project on 09/27/04. We have no comments or requirements.

Please contact the Project Engineer, Mirabel Aguilar, at (408) 277-5161 if you have any questions.

Ebrahim Sohrabi
Senior Civil Engineer
Transportation and Development Services Division

ES:MA:rf
26497117010.DOC

OCT 07 2004



Memorandum

TO: Lee Butler
Planning and Building

FROM: Nadia Naum-Stoian
Fire Prevention Engineer
San Jose Fire Department

SUBJECT: INITIAL RESPONSE TO
DEVELOPMENT APPLICATION

DATE: 10/07/04

Approved

Date n/a

PLANNING NO.: CP04-093
DESCRIPTION: Conditional Use Permit to allow entertainment, eating establishments and operation after midnight to 2:00am at an existing night club (previously approved permit expired) on a 0.39 gross acre site
LOCATION: southeast corner of Santa Clara Street and S. First Street
ADDRESS: southeast corner of Santa Clara Street and S. First Street (8 S 1ST ST)
FOLDER #: 04 127044 AO

The San Jose Fire Department has reviewed the related plans as submitted and has the following comments and requirements.

- Comply with comments from the Building/Fire Departments at the plan review stage.
- A permit must be obtained from the Building and Fire Departments. Submit three (3) sets of construction plans to the Building Department, one (1) of those sets of plans will be routed to the San Jose Fire Department for review and comments.
- **THE FOLLOWING CORRECTIONS SHALL APPLY TO THE SUBJECT APPLICATION:**
 1. Contact Captain Steve Padilla, San Jose Fire Department, at (408) 277-8781, to obtain Fire Department permits, if applicable.
- We reserve the right to make comments at a future date.

If you have any questions regarding these items, please contact me at (408) 277-8754.

BY: Nadia Naum-Stoian FPE
Bureau of Fire Prevention
San Jose Fire Department

OCT 07 2004

Memorandum

ENVIRONMENTAL SERVICES DEPARTMENT (ESD)

TO: Lee Butler
Department of Planning,
Building, & Code Enforcement

FROM: Geoff Blair
Environmental Services Department

SUBJECT: Response to Development
Application

DATE: Staff Review Agenda
October 7, 2004

APPROVED: *Geoff Blair* **DATE:** 10-7-04

PLANNING NO. :	CP04-093
LOCATION:	8 South First Street. Southeast corner of Santa Clara Street and South First Street.
DESCRIPTION:	Conditional Use Permit to allow entertainment, eating establishments and operation after midnight to 2:00 am at an existing night club (previously approved permit expired) on a 0.39 gross acre site.
APN:	46722097

ESD received the subject project and is submitting the following conditions and comments. Questions regarding these comments may be directed to the program contact given or to me at (408) 382-8842.

Source Control

Restaurants

The proposed facility must conform to the City of San Jose (City) industrial waste discharge regulations¹. Any non-domestic wastewater discharge into the sanitary sewer system will require Source Control staff to review and approve the final plans. Such review will include sizing of grease traps and interceptors. Contact Environmental Engineering staff at (408) 945-3000, if you have questions.

¹ In accordance with the San Jose Municipal Code, Chapter 15.14 - Industrial Waste Discharge Regulations

Bella Luce

Purpose

San Jose's first L.A. style ultra lounge from the creators of Pearl in Orange County. Bella Luce will bring downtown San Jose a whole new style of nightlife. It will have the most upscale lounge atmosphere catering to San Jose's classiest of clientele. Bella Luce will feature lavish lounge areas with full bottle service, a VIP mezzanine, and have D.J. and live entertainment flown in from around the world. Bella Luce will try to work in conjunction to compliment all of downtown San Jose's finest restaurants by giving people an upscale place to go and dance when they are done dining. Bella Luce will also do a large amount of catering to corporate events and private parties. Bella Luce's world-class customer service and astonishing design will bring a whole new meaning to downtown San Jose nightlife.

Land Use and Compatibility

Bella Luce will be located on the corner of Santa Clara Street between First and Second Street, which is a very popular nightlife area for downtown San Jose's restaurant and nightclub goers. Bella Luce should compliment the existing businesses nicely with its upscale concept of both Happy hours for corporations in the area and late night entertainment concept. By looking at the area's current uses it is a commercial area with a small amount of residence that appear to be supportive of the area's current businesses with no schools or hospitals appearing within a 500 foot radius of the businesses.

Bella Luce will be open 4-5 nights a week for a variety of Happy Hour and late night events along with during the day for special corporate events and activities. The signage will be very tasteful and pre-approved and permitted by the city of San Jose with in sizing regulations for the building.

Line of Queuing

Bella Luce will keep an organized line of queuing that is controlled by removable Stanton's and security at all times the business is open. This will ensure crowd control and that pedestrians can circulate properly in front of the building with no interference from the business's patrons.

Security and Law Enforcement

Bella Luce management staff has worked with the city of San Jose's police department on various restaurant nightclub projects since 1996 and is very aware of the police department's expectations. Bella Luce management has worked with several police departments besides San Jose over the years and has always tried to give the utmost respect to any of the police departments requests. We will be setting up a meeting with San Jose police department prior to opening and at that time will be submitting a security plan and asking them if their expectations are the same as in the past. We have always provided over the required amount of trained security that is properly identifiable to both the patrons and police officers at all times. Along with that we have always set up a closing procedure with the E.Z.Z. police sergeant so we are managing are close while trickling people out where security is promptly directing the patrons to their cars and helping police officers clear the parking lots. Bella Luce management has a strong

opinion about there security staff being responsible for controlling the cliental so no police involvement has to be required some of the extra steps we take are the following: fading the lines for dress code, people that are intoxicated, underage fake ID's and potential problem makers. We will have a camera system video tape the door and street at all times so if a problem that requires the police does occur we can work very tightly with them to rectify it quickly.

Noise

Bella Luce will stay within the City's noise requirement level at all times and has no reason to have any open windows at anytime's since the venue is equip with full HVAC. Bella Luce will have no outside music and will measure its inside music level throughout the night with a meter. If Bella Luce is ever notified of a noise problem it will be addressed and fixed immediately. Although the street Bella Luce is on tends to have a lot of existing noise.

Parking

Bella Luce is located in the heart of downtowns restaurant and entertainment district. There are plenty of parking lots available for Bella Luce patrons in less then one block in every direction from the venue. Bella Luce is also entertaining the idea of having valet parking through an independent company since the crowd we are catering to will probably utilize it quite a bit.

Garbage and Litter

Bella Luce management is very aware of the fact the city of San Jose does not want to clean up after are business. Therefore after we close at 2:00am every night we will have employees sweep and clean all the litter off the street up to 200 feet from the facility and even hose down the sidewalks if necessary. This has always been common practice for us to clean the streets and parking lots in all are venues after the customers leave so no one else has to assume the expense of cleaning up our mess.

Use

Bella Luce will be a lounge with a dance floor with both D.J. and live entertainment catering to the 21 to and up crowd only. There will be no in-house food service just catered events. Bella Luce will close by 2:00am every night and stop its liquor service a minimum of 20 minutes prior to assure all cliental is out of the facility by 2:00am and all liquor is cleared from tables and bar tops. Bella Luce will have no amusement games or pool tables at the present time.

Bella Luce management has almost 13 years experience in the restaurant nightclub business and does this as a livelihood. We open venues to bring more quality people to downtown areas and help enhance everyone's business overall by the cliental we market to attract. Bella Luce wants to work on all levels with the city of San Jose to address any expectations they may have. By doing this project we hope to be an asset to the downtown areas current development and have a successfully operating business in downtown San Jose's current future

CUP
8 SOUTH FIRST STREET
DIAMOND S.J. ENTERPRISE
MANAGEMENT PLAN
FOR
BELLA LUCE IN SAN JOSE

ALL CLUB EVENTS

The following controls are carried out for all Club operations and events:

- Proper ID checks to insure that the proper age group attends any event. Guests must have in their possession a valid California Driver license, Passport, Military ID or a California ID card with proper backup no exceptions.
- Guests must wait in line for proper identification check and search before entering the club.
- Searches prior to entrance for inappropriate substances and weapons. There will be a metal detector for certain club operations
- Security cameras will be in place
- Proper line management and attitude checks. People who are obviously under some sort of influence (drugs & alcohol), people who identify with gangs – either through dress or signs, people who do not meet the dress code, and those who are disrespectful of others: are not allowed in the club that night.
- During A dress code will be enforced
- Peak periods (usually 11:00pm to 1:00am) customers arrive faster than ID's can be checked, searched, and collect cover charge. When this happens a line forms. Our outside staff is primarily composed of our most experienced security hosts.

- Stanchions, hand-held video cameras, proper customer relations, adequate staffing, dress code enforcement, and a process called fading are all utilized to keep customers outside under control.
- A line can only be (2) persons wide and may not exceed the edge of the property. Stanchions will be used to control the line and to maintain passage for pedestrians.
- If the lines are longer than the edge of the property, then a count shall be taken of the line and those exceed the legal occupancy must be informed that we are at capacity and that they may not get in regardless of the wait. In this case, individuals will be encouraged to come earlier next time or to try another night.
- Hours are strictly enforced. No one admitted after 1:30a.m. At 1:30 a.m. "Last Call" starts. At 1:45 a.m. termination of alcohol service. From 1:50a.m. To 2:00am. "Alcoholic Drink Sweep"- Alcoholic drinks swept from club areas. Security staff sweeps parking lot from approximately 1:45 a.m. until customers have left. Last dance varies with each event no later than 1:45am
- If a guest is waiting for another guest to leave the club he or she must wait on the sidewalk.
- If a guest leaves their coat at coat check after hours, a staff member will collect the claim ticket and bring the guest their belongings at the front entrance. Guests shall not be allowed inside after hours.
- Our security staff will have one or two posts in the parking lot; our front door staff has a constant view of the parking lot, and we will perform two sweeps nightly. Insuring that our customers get to their cars safely is crucial to our success.
- There will be a security presence both in and outside of the building, including on the streets, in the parking garage and across the street parking lots.
- After Club is emptied there will be a 2nd parking lot sweep lot sweep Security will be divided in three groups: (1) front of club; (2) underground lot; and (3) streets and parking lot across the street.

Staff Training

To assure an excellent staff, Quality training-program is essential. Training consists of three basic components:

- Initial training: management conducts this training. It features training in company policies and procedures, basic security skills, alcohol awareness training, community relations, and basic emergency procedures.
- Third Party Training: From time to time, outside parties are brought in to conduct supplemental training. Examples of outside parties are police, ABC, independent consultant and emergency medical personnel
- Follow-up/ On-going Training: Formal training ends after the initial sessions are completed. Security staff meets nightly to promote staff development. Management also works with the staff throughout each shift, to continually polish skills.

Staff conduct

The staff is managed according to the highest ethical and legal standards.

- Use of disrespectful or overly familiar language, manners, or demeanor towards customers and other employees is never condoned. Remarks made to a customer or another employee of a racist, religious, color, national origin, sexist/sexual, physical or mental handicap are not permitted.
- Employees must focus on our customer by giving them our full attention and service. Employees must perform their duties in a friendly, courteous and satisfactory manner at all times.
- Employees must follow all local, State and Federal laws at all times in both their personal life and in the performance of their job duties in such a manner as not to bring discredit to the operation or themselves.

- A well- groomed and properly dressed employee symbolizes the foundation of this company and its image and facilities communication between customers and staff. All employees will be issued shirts and jackets, which shall be worn while on duty. Security hosts will say Security on back.

Alcoholic Beverage Security

When the California State Alcoholic Beverage control Board issues a business one of its privileged licenses, a set of responsibilities come with it. The following are general obligations that our security will help meet:

- Insure patrons are over 21: ID scanners and proper examination, as well as entrance / exit staffing are used to insure that all patrons are over 21. The sale of alcohol to minors is a serious criminal offense and, employees will be held responsible to ensure that there is no violation.
- Over- serving: Our entire staff is trained to look for customers who have had too much alcohol. Once identified, security will notify staff then handles the situation in a manner that will prevent any further consumption, and insure a safe trip home for the individual. This may mean allowing the person to remain on property until time and activity have helped them sober-up, insuring a friend drives them home, or arranging for a cab.

Relations with police and Security

Security must be conducted with an ongoing relationship with local law-enforcement and officials. It is important that we maintain a cooperative relationship to achieve our goals:

- There will be a security host for approximately every 75 customers. Youth events will have a security host for approximately every 50 customers.
- Uniforms shall be clearly identifying security hosts.

- Security staff will always cooperate with police in every way.
- We will initiate quarterly meetings with a police representative, to discuss relevant issues.
- We will request that the San Jose Police department provide occasional supplemental training sessions to our staff.
- We will coordinate with other security in our neighborhood.
- We will cooperate with other governmental agencies that relate to security issues (e.g. ABC)
- We have an open door policy to discuss relevant security issues.
- No weapons defined by Section 12020 of the California Penal Code (including firearms, blackjacks, daggers, and metal knuckles) are allowed.
- Employees will monitor the area in front of the club and all surrounding areas not allowing people to loiter and picking up litter during hours of operation.

